

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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)  
Polaris Industries, Inc., ) File No. 15CV4129  
) (JRT/LIB)  
Plaintiff, )  
)  
vs. ) Minneapolis, Minnesota  
) March 23, 2016  
Arctic Cat, Inc., ) 2:15 P.M.  
)  
Defendant. )  
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BEFORE THE HONORABLE CHIEF JUDGE JOHN R. TUNHEIM  
UNITED STATES DISTRICT COURT  
**(DEFENDANT'S MOTION TO DISMISS)**

APPEARANCES

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2:15 P.M.

(In open court.)

THE COURT: You may be seated. Good afternoon.  
This is Civil Case Number 15-4129, Polaris Industries,  
Inc., versus Arctic Cat, Inc.

Counsel note appearances. First for the  
plaintiff?

MR. BULLARD: Good afternoon, Your Honor.  
William Bullard and Dennis Bremer from the Carlson Caspers  
Law Firm representing Polaris Industries.

THE COURT: Good afternoon to both of you.

MR. HERRIGES: Good afternoon, Your Honor.  
Joseph Herriges and John Adkisson representing Arctic Cat.

THE COURT: Good afternoon to both of you.

All right. The Court has reviewed the  
defendant's briefs. We have a motion to dismiss the case.

All right. Are you going to be arguing,  
Mr. Herriges?

MR. HERRIGES: Yes, Your Honor.

THE COURT: Go right ahead.

MR. HERRIGES: If I may approach, Your Honor,  
with the presentation?

THE COURT: Okay.

MR. HERRIGES: Good afternoon, Your Honor. We're

1 here because it's Arctic Cat's contention that asserting  
2 the '449 patent does not assert a claim under the federal  
3 rules. That is not a dispute under today's motion. The  
4 parties do not dispute that the complaint does not satisfy  
5 the new pleadings standards.

6 The question is whether it is just and practical  
7 to apply those rules in this case.

8 THE COURT: Are you arguing also that it fails to  
9 comply under the older pleading standard or not?

10 MR. HERRIGES: We are not, Your Honor. We would  
11 not contest that it fails under that standard. I do want  
12 to be very clear right out of the gate here because there  
13 has been a little mud tossed in the briefing about our  
14 motives. We're bringing this motion, and this is the  
15 fourth of five lawsuits between the parties, as Your Honor  
16 is aware.

17 There were three brief ones. We have answered  
18 every single one of those complaints in a timely fashion.  
19 We don't necessarily agree with the merits of those  
20 complaints. In fact, on the first asserted patent, the  
21 Patent Trials and Appeals Board has held the patent is  
22 completely invalid, but we have nevertheless answered those  
23 complaints in a timely fashion.

24 But we do think that this complaint is  
25 procedurally different and substantively different, and

1 that's why we brought this motion, and I've created a time  
2 line here on my presentation that I think gives a little  
3 background and gives a little color as to why we think it's  
4 appropriate to apply the amended rules in this situation.

5 As you can see, Your Honor, I have highlighted  
6 the four cases that are currently pending before this  
7 court. There is a fifth. It was filed December of 2015,  
8 pending before Judge Montgomery. The first case was filed  
9 back in September 2013, and in September of 2014, there  
10 were two additional cases.

11 The parties went on to litigate those cases, the  
12 consolidated cases, until or through 2014 and into February  
13 of 2015, and at that point, the '449 patent issued, and  
14 that's the patent that is now subject to this motion.  
15 Polaris at that time did not assert the patent.

16 The parties instead continued on litigating those  
17 first three cases until we ultimately filed a joint  
18 stipulation to stay the three cases because of certain  
19 proceedings that Arctic Cat had before the Patent Trials  
20 and Appeals Board.

21 Judge Noel, as you know, initially denied that  
22 request, so the parties jointly appealed to Your Honor for  
23 what we thought was the purpose of slowing down the  
24 litigation for efficiency purposes and for trying to  
25 resolve the case and potentially settle it.

1           Your Honor ultimately granted our motion on  
2           November 5th, and at that point, we were, we were pencils  
3           down. We took our representation seriously that the  
4           purpose of this was to try to resolve the matter, to try to  
5           settle it, but ultimately that's not what happened. We  
6           were ultimately sued less than two weeks later on the '449  
7           patent.

8           Polaris sued us again without warning, and we  
9           were frankly surprised, so we asked for 30 days to evaluate  
10          to re-initiate our litigation efforts to get our client  
11          back up to speed, and that request was granted by Polaris,  
12          and during that time, we began investigating the complaint  
13          and looking at the patent, comparing it to our products.

14          We started to have serious concerns about the  
15          plausibility and the basis for Polaris's complaint, and  
16          I'll just briefly go through that here, Your Honor, but the  
17          '449 patent, as was the case with the other patents in this  
18          litigation, is related to all-terrain vehicles, off-road  
19          vehicles, and it specifically requires, and I've  
20          highlighted the language on page 3, a U-shaped sway bar.

21          What a sway bar is is a metal rod or bar that  
22          runs between the rear suspensions and gives certain  
23          stability to the vehicle. The '449 patent requires  
24          specifically that the middle portion of the sway bar be  
25          positioned rearward of the rear end of the frame.

1           Polaris actually defines what it means by "frame"  
2     in the patent, and I have excerpted it on slide 4 here,  
3     some cutouts from the specification, and what Polaris says  
4     is that that entire section in Figure 9 constitutes the  
5     frame, and we've highlighted the rear end of that frame,  
6     which according to Polaris includes both that red vertical  
7     frame member and that receiver, that hitch receiver on the  
8     back.

9           So when we're looking at this from our  
10    perspective, from Arctic Cat's perspective, we are trying to  
11    evaluate, is our sway bar rearward of that frame portion?  
12    So we go back, and we look at our vehicle, and what I have  
13    put here on page 5 is a CAD drawing of the vehicle Polaris  
14    has accused of infringement.

15           As you can see, the sway bar, which is designated  
16    by that bottom red arrow, is not rearward of either that  
17    vertical frame portion or that hitch receiver in the back.  
18    So when we went back and investigated, we had serious  
19    concerns about what Polaris's basis was for accusing us of  
20    infringement.

21           And those concerns we think are properly vetted  
22    through a motion to dismiss in view of the new rules  
23    because we frankly don't think they're plausible, and as  
24    Your Honor knows, the old Form 18, which has historically  
25    governed pleading standards for patent cases, is very

1 generic.

2 It simply requires that you essentially state  
3 that you own the patent and accuse the other side of  
4 infringement. It's highly generic as Your Honor noted in  
5 the *University of Minnesota* litigation, but the Supreme  
6 Court in April of 2015 announced that it was going to  
7 abrogate that rule.

8 And one of the main reasons they were going to  
9 abrogate it is to bring the pleadings standard for patent  
10 infringement in line with the pleading standards for other  
11 causes of action that have over the last decade developed  
12 under the *Iqbal Twombly* regime, excuse me, and that's a  
13 plausibility standard.

14 And what the Supreme Court says is that the rules  
15 are going to go into effect on December 1st, and they will  
16 govern not only all proceedings that exist after that date,  
17 but insofar as just and practicable, all proceedings then  
18 pending.

19 So we fall under that later, that later category,  
20 and the question is, Is it just and practicable to apply  
21 these rules retroactively? And the District of Minnesota  
22 and courts throughout the country have held that  
23 retroactivity, retroactive application of the federal rules  
24 is heavily favored.

25 Judge Montgomery in the *Dietz* case observed that

1 the burden actually falls on the party resisting  
2 retroactive application to show that it is unjust or  
3 impractical. The Fifth Circuit in the second case we have  
4 noted there said, To the maximum extent possible the rules  
5 should apply retroactively.

6 That case, Your Honor, is particularly  
7 interesting, the case from the Fifth Circuit, because at  
8 the time the District Court decided the case there, one  
9 rule was in place, and the federal circuit observed there  
10 was no question that the District Court was correct under  
11 that rule.

12 During the pendency of appeal, the rules changed,  
13 and the Fifth Circuit said, we're still applying it  
14 retroactively because it's just and practicable to do so.  
15 So that gives the Court a sense of the extent to which it  
16 is favored to apply rules retroactively. I note on this  
17 next slide that they apply, similar to the Fifth Circuit  
18 case, other courts have said that they apply to preexisting  
19 disputes.

20 So even disputes that arose, were fully briefed  
21 before the rule came into effect, courts are saying that  
22 we're going to apply the rule retroactively.

23 THE COURT: So which side's burden is it to prove  
24 either just and practicable or unjust and impracticable?

25 MR. HERRIGES: Our view, Your Honor, and I will



1 scan back here to the *Dietz* case is, the way Judge  
2 Montgomery phrased it, is it would be in this case  
3 Polaris's burden to say --

4 THE COURT: That case is not binding on this  
5 Court, though, correct?

6 MR. HERRIGES: That's not, Your Honor. I'm not,  
7 to be fair, I am not aware of any court that is binding on  
8 this Court that has outright stated whose burden it is, but  
9 that is the way Judge Montgomery characterized it, and I  
10 would say that from our perspective we don't think it  
11 matters whose burden it is. We think that we can meet the  
12 burden here of showing that it is just and practicable to  
13 apply these rules, and we think that's the case for three  
14 reasons.

15 To step back a minute in terms of what we're  
16 asking for, I do want to be very clear. We're not asking  
17 the Court to dismiss this case with prejudice. We're not  
18 saying Polaris cannot go forward with their claim. We're  
19 saying that we have serious questions about the  
20 plausibility, and we think that they need to plead, if they  
21 can, a plausible claim for relief.

22 We think it's just and practicable to do so  
23 because any delay here is really going to be very minimal  
24 in the scope of the parties' dispute. As I pointed out  
25 initially when going through the time line, this patent

1 issued over a year ago now, and Polaris chose not to assert  
2 it at that time. They chose with us to jointly stipulate  
3 to a stay of the litigation. So I think any assertion that  
4 delay is unduly prejudiced, in view of what the parties  
5 have done so far, I think falls a little flat.

6 It's also a nominal burden here. Again, we're  
7 not saying Polaris needs to lay out their entire case. In  
8 fact, they have in the fifth case, they pleaded under the  
9 new standard, and we agreed. We answered that complaint  
10 that it was fully compliant with the new rules. So we're  
11 not saying they need to lay out detailed claim charts.

12 They just need to plead plausibility, and the  
13 final point, Your Honor, is that as I have said, we do  
14 think that the plausibility here is highly suspect from our  
15 perspective, and that's exactly what these amended rules  
16 were designed to do. They were designed to ferret out thin  
17 claims at the pleading stage, rather than forcing the  
18 parties to undergo extensive discovery and extensive  
19 contention requests for months before the theory of the  
20 case is laid out.

21 So, Your Honor, with that, we respectfully  
22 request that you apply the rule retroactively and grant our  
23 motion.

24 THE COURT: One question.

25 MR. HERRIGES: Yes.

1 THE COURT: If the Court applied the older rule,  
2 the Form 18 version of the rule, how would that be unjust  
3 to Arctic Cat?

4 MR. HERRIGES: I think it would be unjust to  
5 Arctic Cat because, as I have said, we've got a lot of  
6 concerns about the plausibility here, and that's why I  
7 think this case is unique. If we don't apply the old  
8 standard, we're going to go forward for months here not  
9 understanding how they've got a plausible basis for  
10 asserting their claim.

11 We're going to have that patent overhanging our  
12 head, overhanging our business, and I frankly think it  
13 could interfere with the parties' ability to crystallize  
14 the dispute and resolve it because we're not going to fully  
15 understand what their basis is or understand the plausible  
16 basis for it.

17 THE COURT: All right. Thank you.

18 MR. HERRIGES: Thank you, Your Honor.

19 THE COURT: Mr. Bullard, is it?

20 MR. BULLARD: That's right, Your Honor.

21 THE COURT: Go ahead.

22 MR. BULLARD: Good afternoon, Your Honor. I'm  
23 going to start with a few comments on my opposition's  
24 presentation, and then I want to clarify two things and  
25 then get to the merits.

1 THE COURT: All right.

2 MR. BULLARD: First, notably about half of that  
3 presentation didn't go to the legal question here which is,  
4 Would it be just and practical? I think if we had timed  
5 that presentation, it took about at least half of it to get  
6 to the actual question here, and very little substance was  
7 devoted to, What does it mean to be just and practicable?

8 THE COURT: One clarifying question from my  
9 vantage point. You're not arguing that the current  
10 complaint satisfies the new rule, correct?

11 MR. BULLARD: That's right, Your Honor. That was  
12 not an argument advanced in the brief. I guess I would add  
13 as one gloss on that, the primary point of plausibility  
14 they raised in their opening brief was an issue about the  
15 claims, and they said sort of, we're not sure what claim is  
16 asserted.

17 There is only one independent claim in this  
18 patent, and so they know, they certainly have notice of  
19 what to go forward with, and they also made a comment about  
20 sort of there being some confusion about which claim  
21 limitations. You know, for there to be any infringement,  
22 all claim limitations have to be met. So I don't think  
23 there is any plausibility concern there.

24 The second comment, Your Honor, on the opening  
25 presentation is, really what I saw a lot in that

1 presentation is comments about the merits, you know.  
2 They're putting in annotated figures from the patent.  
3 Those are their annotations, their versions. Those are  
4 things that aren't in the pleading. Those figures, they  
5 weren't in our pleading.

6 These are things they brought in, and really, and  
7 I'm going to wrap back to this at the end. I think what is  
8 really going on here is, like every patent case, there is a  
9 claim construction dispute, but a motion to dismiss is not  
10 the vehicle, whether it's disguised as plausibility or  
11 otherwise, to resolve the claim construction dispute.

12 That's a question that is for later in the case,  
13 and this district has a particular procedure, Form 4, that  
14 guides that, guides resolving that dispute, and moving to  
15 the second part as far as the clarification, there is no  
16 dispute, as Your Honor sort of elicited with your first  
17 question, that we did comply with the pleading rules in  
18 effect at the time we pled.

19 And Mr. Herriges mentioned the sort of the saga  
20 of other litigations, and what I would highlight is, in all  
21 of those cases, there was a declaratory judgment brought by  
22 Arctic. There was a couple patent cases brought by  
23 Polaris, and there has been further cases brought by  
24 Arctic.

25 In all those original cases, the parties moved

1 forward with the case with no problem with this exact form  
2 of complaint. So I think the sort of the insinuation in  
3 response to your last question that there would be some  
4 problem is belied by the long litigation history between  
5 the parties. None of the parties have had any problem with  
6 this style of pleading.

7 And the second clarification is, the point of  
8 pleading, whether it's under *Twombly* or whether it is under  
9 the form, it is still notice, and there is no sincere  
10 dispute that they have notice of what the issue here is,  
11 and I think that's really proven by their presentation, as  
12 well as their brief. In their reply brief on page six,  
13 they put in that CAD drawing that you saw earlier on the  
14 screen.

15 Stepping back, the fact that they were able to  
16 pull a specific CAD drawing and annotate it shows that they  
17 know exactly what the issue is. They are zeroed in. They  
18 know the claim. They know the issue, and so we think we  
19 have certainly achieved the notice purpose of the rules.

20 Now, moving to the substance part, the question  
21 is really, What does it mean to be just and practicable? I  
22 heard Mr. Herriges talk about the burden, and Your Honor  
23 asked some questions, and looking at that *Dietz* case, I  
24 don't think the *Dietz* case says one way or another what,  
25 who has the burden, and frankly I don't think it makes

1 sense to, in this situation, for either party to have the  
2 burden.

3 I think it's just a common sense evaluation of  
4 the circumstances, and Mr. Herriges also had a quote up  
5 there from a different circuit suggesting that there was  
6 this rule that you just, as a sort of automatic exercise,  
7 apply the rule to the maximum extent possible. That  
8 comment was made in the context of a particular amendment  
9 to the rule. I think it had to do with Rule 24. That was  
10 an older case.

11 There certainly has been no suggestion in this  
12 circuit or I think in that circuit that there is a default  
13 that you apply the rule automatically. It's always a  
14 question of, What is just and practicable? Starting with,  
15 and I would like to just walk through each of those words.

16 As far as practicality goes, Polaris's position  
17 is that it's not practical to have a remedy that requires  
18 you to basically reset the case and undo what you already  
19 did, and I think the *Dietz* case really brings this point  
20 out. Mr. Herriges had a quote up there from Judge  
21 Montgomery, and what he ellipsed out, though, is really the  
22 heart of why she retroactively applied the rule.

23 There the question was, it was Rule 45, Should  
24 the Court retroactively apply a change to the subpoena  
25 rule, and the Court ultimately yes, and the reason, and

1 this is what she said: She said, Additionally, all conduct  
2 relevant to the contested subpoena occurred after the  
3 amendment took place, and we have the opposite situation  
4 here. The conduct here was, we pled and the rule changed.

5 It's a very different situation when you're  
6 dealing with conduct that took place after the rule, and  
7 Mr. Herriges also had a slide where he talked about some  
8 courts that have applied the changes to the discovery rule.  
9 Again, that's completely consistent with Judge Montgomery's  
10 opinion where the focus is on when is the conduct taking  
11 place.

12 When we're dealing with discovery, that's  
13 continuing conduct that you can help shape the parties'  
14 behavior in a proactive way going forward. Pleading is a  
15 one-time event that they would want to sort of have us step  
16 back, and so our position is, it's not practical, and we  
17 think Judge Montgomery got it right when she focused on  
18 when the conduct occurred relative to the rule.

19 Now, on the question of whether it is just, what  
20 the cases seem to really be getting at is something that is  
21 fundamentally different than this case. What they're  
22 getting at is, Would applying the rule avoid prejudice? So  
23 they're concerned about situations where the rule is fixed,  
24 and a party who had made a mistake is left hanging out to  
25 dry, and they feel sorry for that party.



1           A good example is the *Federal Bureau* of Prisons  
2     case, which I think Mr. Herriges cited. I believe that  
3     might have even been that First Circuit case, and there the  
4     situation was that the plaintiff's case had been dismissed  
5     for failure to name the proper party, and subsequent to  
6     that, I believe it was Rule 15 was amended, and on appeal,  
7     the Court was sympathetic for this party whose case had  
8     been dismissed for this technicality.

9           Now here, we're doing with the opposite. They  
10    actually want to affirmatively dismiss our case and have us  
11    re-plead, and I think if we're talking about prejudice, I  
12    just really don't see any sincere prejudice to Arctic Cat.  
13    So going, looking back at this question of what is  
14    practical and what is just, we don't think it's practical,  
15    and we don't think it's just, and we would note that there  
16    is a conspicuous absence here.

17          They don't have any case where any court has done  
18    what they're asking. No court as far as we're aware, and  
19    we did a check yesterday before we came over, no court has  
20    retroactively applied the rules to dismiss a case that  
21    there is no dispute properly followed the rules at the time  
22    of its pleading in a patent case here.

23          So not only do they not have any cases, our  
24    position is their cases refute them. I went through the  
25    *Dietz* case where Judge Montgomery focused on when the

1       conduct occurred. I went through the *Federal Bureau of*  
2       *Prisons* case, which was trying to avoid prejudice and avoid  
3       a dismissal. The logic doesn't support them.

4               Your Honor, two final comments. First on the  
5       practicality subject, there is no substantive benefit to  
6       granting their motion, none. I mentioned earlier, as Your  
7       Honor is aware, that this district has a procedure that  
8       gets them a detailed claim chart and gets us a detailed  
9       prior art statement. That's the way it's supposed to work.

10              If they hadn't brought this motion, we would be  
11       nearing that deadline. They would be getting that high  
12       level of detail now, but because they brought this motion,  
13       nothing has happened in this case. We're four months in.  
14       We haven't had a scheduling conference. We don't have a  
15       scheduling order.

16              There are other cases between the parties that  
17       were filed subsequent to this one. We have a scheduling  
18       order. We have a deadline for claim charts. We're moving  
19       towards the merits. If they're concerned about the merits,  
20       we should be moving towards the merits, not moving  
21       backwards, and on the practicality point, really amending  
22       here is counterproductive.

23              Mr. Herriges mentioned that there was a fifth  
24       case between the parties where we had a different style of  
25       pleading, and what happened in that case is, when they

1 answered, there was no narrowing of the issues whatsoever.  
2 What they did is, they denied our allegations because they  
3 said, quote, "They state a legal conclusion to which no  
4 response is required."

5 So if we were ordered to amend, that's what we  
6 would get back from them, no clarification whatsoever.  
7 This is not a step forward. This is a formalistic going  
8 through the motions, and then finally, Your Honor, you  
9 know, there has been some insinuations about the  
10 plausibility here, and I want to emphasize that in their  
11 opening brief, there was no dispute that we plausibly  
12 stated a claim under the rules at the time of the pleading.

13 This is an argument they brought up for the first  
14 time in their reply that we never had a chance to respond  
15 to, and when we look at what they have put in, it's very  
16 clear that we do have a plausible claim, and again, as I  
17 mentioned in the beginning, this is simply a claim  
18 construction, a vanilla claim construction dispute.

19 So here is their figure they put in, and it is a  
20 side view of the product, which frankly makes it a little  
21 bit difficult to assess the limitation, as Mr. Herriges  
22 alluded to, has to do with the rear end of the vehicle. So  
23 it's a little bit easier to understand when you look at the  
24 rear of the vehicle as opposed to the side.

25 So the question is whether the middle portion of

1 the sway bar, so that's kind of the green line that is  
2 going into the page which they have drawn that sway bar  
3 arrow to, whether that is rearward of a rear end of the  
4 frame, and they annotate these two points.

5 Now, there is nothing in the patent, nothing in  
6 the specification, that says you should assess this claim  
7 limitation using those two points. They have simply picked  
8 those two points because that's the construction they want.  
9 That's not what the patent says.

10 If we go to the next slide, Your Honor, looking  
11 at their figure, I have drawn a yellow arrow to another  
12 point on the frame. That's the point on the frame where  
13 the middle portion is actually located. So you can see if  
14 you look at the red arrow going to the sort of the bright  
15 green bar and then the yellow arrow going to the light  
16 green bar, at that point the sway bar is undeniably  
17 rearward of the frame.

18 So there is certainly plausible interpretations  
19 where they infringe, and again, Your Honor, you know, I  
20 titled this the Merits. Our position is, this is all a  
21 discussion of the merits, which is just inappropriate at a  
22 motion to dismiss, and, you know, this figure, this wasn't  
23 even in the pleading.

24 Certainly, if we're just looking at figures,  
25 though, what I have put up for Your Honor's benefit is a

1 rear view, which I think makes this even clearer. On the  
2 left, I have the preferred embodiment from the patent, this  
3 showing in red what it looks like to have a sway bar with  
4 the middle portion rearward of a rear end.

5 Here is their product. It's very similar, very  
6 similar, and, you know, this is not a case where they  
7 called us up on the phone and said, you know, we have an  
8 issue. We're a little confused about your interpretation,  
9 or we don't think you have a Rule 11 basis. None of that  
10 happened.

11 They simply brought this motion, and the only  
12 basis they have is for this retroactive application of the  
13 rule, and Your Honor, to sum up, we just don't think it's  
14 just and practical, and if there was any doubt, we would  
15 cite to Rule 1, which is supposed to be the guiding light  
16 for all these procedural rules: Just, speedy and  
17 inexpensive.

18 We don't think this motion achieved any of those  
19 goals. We have wasted money. We have wasted time, and we  
20 are not moving the ball towards the merits. Thank you,  
21 Your Honor.

22 THE COURT: Thank you, Mr. Bullard.

23 Did you have anything else, Mr. Herriges?

24 MR. HERRIGES: Just a minute, Your Honor?

25 THE COURT: Sure.

1 MR. HERRIGES: I do want to point out, Your  
2 Honor, we're not raising these disputes about claim  
3 construction to try to resolve this case on the merits. We  
4 raised this issue because we don't think it's plausible,  
5 and these pleadings and this explanation that we have heard  
6 today isn't in the complaint. So it's not plausibly  
7 showing to us how we infringe in their view.

8 I'll also note, Your Honor, that quite frankly we  
9 expected that they would amend under Rule 15, as they were  
10 entitled to do, the day that we filed our complaint.  
11 That's what we thought was going to be the result of this.  
12 So frankly we're a little bit surprised we're here. Again,  
13 these concerns about delay we think are largely  
14 manufactured.

15 Unless Your Honor has further questions, that's  
16 all I have.

17 THE COURT: I don't. I have one unrelated  
18 question. The dispute that is in the separate case before  
19 Judge Montgomery right now?

20 MR. HERRIGES: Yes, sir.

21 THE COURT: Are all of you involved in that one  
22 as well?

23 MR. HERRIGES: We are, Your Honor.

24 MR. BULLARD: We are.

25 THE COURT: My question is, It's a different

1 patent in that case, correct?

2 MR. HERRIGES: Yes, Your Honor.

3 THE COURT: What's the subject matter of that  
4 patent?

5 MR. BULLARD: Your Honor, it's all-terrain  
6 vehicles again, but I think it has to do with a novel air  
7 filtration system.

8 MR. BREMER: I would call it CVT air intake would  
9 probably be the parties' --

10 THE COURT: All right. That's helpful.

11 MR. BREMER: Thank you, Your Honor.

12 MR. HERRIGES: Thank you, Your Honor.

13 THE COURT: Thank you. The Court will take the  
14 motion under advisement and will issue an order shortly.  
15 Thanks.

16 The Court is in recess.

17 THE CLERK: All rise.

18 \* \* \*

19 I, Kristine Mousseau, certify that the foregoing  
20 is a correct transcript from the record of proceedings in  
21 the above-entitled matter.

22

23

24 Certified by: s/ Kristine Mousseau, CRR-RPR  
25 Kristine Mousseau, CRR-RPR